

Nephi Rubber Products Corp., a Cypher-Jones Company and Jerry D. Steele and Kim W. Hall and Keith Steele and Marlynn Buckley and Carl Calderwood. Cases 27-CA-9671-2, 27-CA-9671-3, 27-CA-9671-4, 27-CA-9671-5, and 27-CA-9671-6

September 22, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 29, 1991, the National Labor Relations Board issued its Decision and Order in this case,¹ ordering the Respondent, Nephi Rubber Products Corp., inter alia, to make whole the Charging Parties for any loss of pay they may have suffered as a result of the Respondent's unlawful denial of employment to them. On October 9, 1992, the United States Court of Appeals for the Tenth Circuit entered its judgment enforcing in full the backpay provisions of the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatees under the terms of the Decision and Order issued by the Board, the Regional Director for Region 27 issued and duly served on the Respondent a compliance specification and notice of hearing on April 7, 1993, notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. Subsequently, the Respondent filed an answer, admitting in part and denying in part the allegations of the compliance specification.

On May 10, 1993, counsel for the General Counsel filed with the Board a Motion to Strike Portions of Respondent's Answer and for Partial Summary Judgment, with attachments. The General Counsel's motion alleges that the Respondent's answer, except those portions relating to the discriminatees' regular expenses, medical expenses, interim earnings, and the resulting net pay, failed to satisfy the requirements of Section 102.56 of the Board's Rules and Regulations which requires, inter alia, that any denial as to matters within the Respondent's knowledge must specifically state the basis for disagreement with the specification and set forth in detail the Respondent's position as to applicable premises with supporting figures for its denial.

On May 13, 1993, the Board issued an order transferring the proceedings to the Board and a Notice to Show Cause why the motion should not be granted.

On the entire record in this proceeding, the Board makes the following

Ruling on the Motion to Strike Portions of Respondent's Answer and for Partial Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations state:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted as true and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

We agree with the General Counsel that the Respondent's answer is substantively deficient insofar as it contains only general denials concerning those matters within the Respondent's knowledge. The compliance specification served on the Respondent indicates that the Respondent's answer must comport with the requirements of Section 102.56 of the Board's Rules and Regulations, and, to the extent it fails to do so without adequate explanation, the allegations in the

¹ 303 NLRB 151 (1991).

² 976 F.2d 1361.

specification shall be deemed to be admitted to be true. The Respondent's answer denies for all five discriminatees the following allegation of the specification: (1) that the backpay period begins on May 2, 1986; (2) the formula for calculating backpay; (3) the quarterly gross backpay; and (4) the net backpay. The Respondent's answer does not state the basis for its denials, does not assert an alternative formula for determining gross or net backpay, and does not provide any supporting figures for its positions, as required by Section 102.56 (b) of the Board's Rules and Regulations.

All the above-enumerated allegations denied by the Respondent pertain to subjects clearly within the Respondent's knowledge. Therefore, we agree with the General Counsel that the Respondent's answer to the compliance specification is substantively deficient, except with regard to those portions dealing with the discriminatees' regular expenses, medical expenses, interim earnings, and the resulting net backpay. Because we have found that the Respondent's general denials as to the above-enumerated allegations are insufficient under Section 102.56(b) and (c) of the Board's Rules and Regulations, we deem the Respondent to have admitted these allegations to be true. Accordingly, we shall grant the General Counsel's motion and shall

order a hearing limited to determining the discriminatees' regular expenses, medical expenses, interim earnings, and the resulting net backpay.

ORDER

It is ordered that the General Counsel's Motion to Strike Portions of Respondent's Answer and for Partial Summary Judgment is granted.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 27 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge, which shall be limited to taking evidence concerning the regular expenses, medical expenses, interim earnings, and the resulting net backpay of Jerry D. Steele, Kim W. Hall, Keith Steele, Marlynn Buckley, and Carl Calderwood.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.